

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 536 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHANJI DEVJI THRO.VAHI 'KARTA JAYANTILAL DAHYABHAI

Versus

KANJI BHANJI PARMAR

Appearance:

MR DU SHAH for Petitioner

MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 31/07/97

ORAL JUDGEMENT

1. The petitioner before this court is the purchaser of decree passed in favour of Bhanji Devji Hindu Undivided Family and respondent is the son of the tenant-J.Dr. It appears that the decree for possession of the suit premises was passed by the court of Civil Judge (JD) at Dhari in Reg.C.S.No.4/72 against aforesaid Kanji Bhanji Parmar on the ground of nonpayment of rent.

Being aggrieved thereby he preferred Reg.CS No.103/76 in the District Court at Amreli which was dismissed on 23.3.79. Being aggrieved thereby CRA No.1215/79 was filed in this court during pendency of which the tenant died, but unfortunately, his heirs were not brought on record. On 24.10.91 the said CRA was however dismissed on merits.

2. On 6.6.89 the original plaintiff sold the property in question to Patel Savjibhai Maganbhai by registered sale deed. On 21.12.1992 he filed Reg.Darkhast No.18/92 in Dhari court which is dismissed on 3.12.1993. It is against said order that the present CRA is filed and rule nisi was issued by the Ld.single judge.

3. At the hearing of this CRA, Mr.S.M.Shah, Ld.counsel appearing for heirs of respondent-J.Dr. took preliminary objection to the maintainability of the appeal based on the decision of the Full Bench of this court in the case of PRABHATSHANKAR SHANKARLAL JOSHI AND ORS vs FULSINHJI KESHARISINHJI PARMAR reported in 1984 GLH 662 wherein I.C.Bhatt,J(as His Lordship then was) speaking for the Full Bench in para 12 of the judgment took the following view:

"The Code of Civil Procedure, 1908 mentioned in the Rent Act and the Rules made thereunder, would be that Code as it stood in 1953 when it came to be incorporated in the Rent Act and not as mentioned in 1976. An appeal would therefore lie against the determination of any question under Section 42 of the Code of Civil Procedure in execution proceedings under the Bombay Rent Act and the Rules made thereunder on the principle of incorporation. We accordingly answer the question referred to us. Parties to bear their own costs. This revision application will now go back to the Division Bench of this court for hearing and final disposal in the light of the answer given by us"

4. Shortly speaking the view taken by the Full Bench was that the appeal would lie against the determination of any question under section 47 of CPC in execution proceedings under the Bombay Rent Act and Rules made thereunder on the principle of incorporation. In view of the aforesaid view of the Full Bench of this court, the preliminary objection taken by Mr.Shah shall have to be upheld and this CRA is directed to be returned back to

the petitioner for being presented to the appropriate court as regular appeal and appropriate court to which the present papers are presented shall register this CRA as regular appeal consistent with law laid down by the Full Bench of this court and shall not raise any objection as to delay while entertaining such appeal.

5. In the result, rule is discharged with the aforesaid directions. No costs.

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